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November 10, 2022

Via ECF

Hon. Loretta A. Preska
 U.S. District Court, S.D.N.Y.
 500 Pearl Street, Courtroom 12A
 New York, NY 10007

**Re: *Hesse, et al. v. Godiva Chocolatier, Inc.*, No. 1:19-cv-0972-LAP
 Request for Status Conference**

Dear Judge Preska:

On August 19, 2022, Plaintiffs filed a letter informing the Court that Godiva needed additional time to fund the settlement and that the parties intended to submit a joint filing. *See* ECF No. 145.

Since then, the parties engaged Jill Sperber, the mediator in this case, pursuant to paragraph 127 of the Settlement Agreement. Plaintiffs are working to present a workable resolution to the Court with respect to the timeline for funding the settlement.

However, a related issue came to light in connection with these discussions, which the parties have been unable to resolve, despite repeated efforts with the mediator over the past month. Plaintiffs respectfully request that the Court schedule a status conference, which will enable the parties to provide additional details, and discuss any logistics regarding how these issues should be presented to the Court for resolution. The issues are briefly summarized below.

Prior to final approval, Kroll, the settlement administrator, represented to the parties and the Court that “Kroll reviewed and analyzed all Claims to validate, check for fraud, and identify duplicate claims, consistent with industry practice”, and that “based on its review and analysis, Kroll has determined that there are 509,953 timely and valid Claims and has marked a total of 317,723 as not valid.” Supplemental Declaration of James R. Prutsman ¶¶ 12,13 (ECF No. 105). As such, Kroll concluded that “the aggregate value of approved Claims is a minimum of \$7,555,229.38”. *Id.* ¶ 13.

Plaintiffs learned that after the Court granted final approval and entered judgment based on the above, Godiva has independently caused the settlement administrator to conduct several additional rounds of review. As a result of these multiple rounds of additional review, and in contravention of paragraph 74 of the Settlement Agreement (requiring review of claims to occur within a reasonable time), Godiva intends to substantially reduce the number of claims that Kroll



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previously represented were valid. Supplemental Declaration of James R. Prutsman ¶¶ 12,13 (ECF No. 105).¹ These revelations are concerning and merit further inquiry.

Consequently, Plaintiffs are currently in the process of conducting an independent review of Kroll's findings, with the goal of ensuring that all class members who submitted valid and timely claims receive compensation.

While this audit is ongoing, Plaintiffs believed it prudent to inform the Court of these issues now. The issues that may need to be resolved by the Court are: (a) the procedure for making a final determination as to fraudulent claims, including *inter alia*, whether class members who submitted claims that Kroll has subsequently flagged as potentially fraudulent should receive additional notice and/or be given the opportunity to provide substantiation of their claims, and (b) whether the notice and claims process should be redone in whole or in part, and whether it should be performed by a different settlement administrator.

In light of the foregoing, Plaintiffs respectfully request that the Court schedule a status conference, on a date as soon as possible that is convenient to the Court. Plaintiffs respectfully suggest that the parties submit a joint filing of five pages with their respective positions on the issues prior to the status conference.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Tim Peter', with a long horizontal flourish extending to the right.

Timothy J. Peter
Faruqi & Faruqi, LLP

The Wand Law Firm, P.C.
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Attorneys for Plaintiffs

¹ Plaintiffs understand that Godiva has recently requested yet another round of review of the claims be conducted.